United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

311

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1148

UNITED STATES OF AMERICA,

v.

AZRA HAMILTON,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT AND APPENDIX

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

In light of the en banc decision of this Court in the case of *Watson v. United States,* ____U.S. App. D.C.____, ____F.2d _____ (No. 21,186, June 15, 1970) that it would offend the concept of equal protection embodied within the due process clause of the Fifth Amendment to bar persons with prior felony convictions from consideration for treatment under the Narcotic Rehabilitation Act

of 1966 (18 U.S.C. 4251-55) and the consistent adherence to this ruling by this Court in later cases, was it not error for the District Court to rule that the appellant herein was not eligible for treatment under the act upon his pleas of guilty of a violation of the federal narcotic laws based upon the possession of 6 packets of a heroin mixture, because of his prior felony convictions where there were indictions in the record that he had been and was addicted to the use of drugs and the heroin that was the subject of the crime to which he pleaded guilty was for his own use.

The pending case has not previously been before this Court.

STATEMENT OF THE CASE

On October 30, 1970, an indictment was returned in the District Court charging the defendant with violations of Federal Narcotic Laws 26 USC 4704(a) and 21 USC 174. He was arraigned on November 10, 1970, and pleaded not guilty; but on December 4, 1970, he withdrew his plea of not guilty and entered a plead of guilty to Count One of the indictment. On that date, a petition to adjudicate him a drug addict was filed by his attorney. The case was continued to January 8, 1971, for further proceedings. On January 7, 1971, the Government filed an information as to a previous Federal Narcotic Law violation to which the defendant had pleaded guilty in 1964. On January 8, 1971, the District Court sentenced the defendant to seven years with recommendation that he receive medical treatment.

STATEMENT OF FACTS

A two count indictment was returned against the Appellant Azra Hamilton, Jr.[1] charging him with violations of the Federal Narcotic Laws, to wit, 26 USC 4704(a) and 21 USC 174.[2] From the record herein it appears that the defendant was arrested on June 2 or 3, 1970, and ultimately charged with offenses from the alleged possession of six packets containing a mixture of 5,179 milligrams of heroin and other substances. On June 3, 1970, a report was filed by the D.C. Bail Agency that contained the following information: "PRIOR CONVICTIONS MPD files: 47/UUV/1-3 yrs. prob. 48/Fug/TOT Md. 48/GL/prob. revoked 4 yrs. 61/good time release revoked: 62/HMA/parole revoked 2 yrs:" and "REMARKS: Def states he last used heroin yesterday and uses all he can get." (JA. 5)

He was arraigned on November 10, 1970, and entered a plea of not guilty. On December 4, 1970, the defendant, with counsel, withdrew his earlier not guilty plea and entered a plea of guilty to count one of the indictment. On the date his plea was entered a

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[1]Hereinafter referred to as the defendant.

[2]The indictment specifically charged as follows:

> "First Count: On or about June 2, 1970, within the District of Columbia, Azra Hamilton, Jr. purchased, dispensed and distributed not in the original stamped package and not from the original stamped package, a narcotic drug that is, six packets containing a mixture totaling about 5,179 milligrams of heroin, and other substances.
>
> "Second Count: On or about June 2, 1970, within the District of Columbia, Azra Hamilton, Jr. received, concealed and facilitated the concealment of a narcotic drug, that is, six packets containing a mixture totaling about 5,179 milligrams of heroin, and other substances, after said heroin had been imported into the United States contrary to law, with the knowledge of Azra Hamilton, Jr. This is the same heroin which is mentioned in the first count of this indictment."

"petition to adjudicate the defendant a drug addict" was filed by his attorney. (JA. 3) Essentially, this petition alleged that the defendant "is and has been for many years a drug addict, requiring him to use approximately 70 caps or five bags of heroin per day;" and further, that the defendant "did develop (sic) severe abscesses on his body, requiring him to obtain skin grafts on his arm at the D.C. General Hospital in August of 1970;" and that the heroin seized in the defendant's apartment on June 2, 1970, "was for his personal use and not for the sale to other drug addicts." Finally, his petition stated that, only a physical examination of the defendant would reveal the extent of his drug addiction and the physical damage to his body. The petition moved the court to enter an order adjudging the defendant "to be an addict and committed to the proper institution for care and treatment. At the time the Court accepted the plea it remarked to the defendant's attorney:

> "Take him to the probation office and tell them we are considering commitment under Title II, but we want a presentence investigation and report anyway."

The matter was continued to January 8, 1971. On January 7, 1971, the Government filed an information as to previous conviction in the case, advising the Court that the defendant's plea of guilty entered in this case was not a first offense, but a subsequent one, the defendant having pleaded guilty on December 5, 1963 "to possession of narcotic drugs in this Count in Criminal No. 1056-62." And that on February 28, 1964, the defendant was sentenced to eight to 24 months imprisonment. (JA. 4)

On January 8, 1971, the defendant, with counsel, again came before the Court. At the beginning of the proceedings the Court asked the defendant if there was anything further he wanted to say at that time. The defendant replied. "Well, I have been under the program and I have been behaving myself." Upon inquiry by the

Court, the defendant admitted that he was the same person who had previously been convicted of "possession of narcotics before Judge Walsh." (JA. 10) The Court next asked the defendant's attorney whether there was anything he wanted to say. Counsel noted that the last time they were before the Court it had occasion to look at the defendant's arm. The Court replied that it had, and that the defendant appears to be in much better shape today. Counsel for the defendant continued his remarks to the Court as follows:

> "Yes. He is still receiving treatment at the hospital for his arm.
>
> "I would ask your Honor to place this man in some federal hospital where they could keep an eye on the skin grafts and where he could receive some type of group therapy to help straighten out his thinking in regard to his use of narcotics because it is killing him and just to put a man in a cell and say to him serve your time is not enough.
>
> "There are some people that are weaker than others and we ought to try and guide them in life and help show them the way.
>
> "I think this is a prime example of a man that for more than 20 years has been addicted to narcotics, all types of drugs, and you can see what he has done to his body physically and we should try and help him.
>
> "I respectfully ask that he be sent to some institution where he can get the proper medical and psychological treatment that he needs." (JA. 10-11)

After the above remarks of counsel the Court stated:

> "THE COURT: Unfortunately, as you know, because of his prior record, and the crimes involved, he is not eligible for treatment under the Narcotics Addict Rehabilitation Act and there is a mandatory sentence here.

"In Criminal Case No. 1931-70, the Court sentences the Defendant, Azra Hamilton, Jr., to be incarcerated for a period of seven years in a penal institution to be designated by the Attorney General or his authorized representative.

"I will recomment medical treatment if possible, but I don't know what is available under the circumstances." (JA. 11)

This appeal followed.

ARGUMENT

The appellant's contention on appeal is that this Court should vacate the sentence herein and remand this case for resentencing so that the Court below can give consideration to the disposition of the defendant under Title II of the Narcotic Addict Rehabilitation Act of 1966 (18 USC 1451 et seq.), not withstanding his prior felony convictions. This disposition of his case, in light of the record herein, is dictated by the holding of this Court in the case of *Watson v. United States*, ____U.S. App. D.C.____, ____F.2d ____(No. 21,186, June 15, 1970) (on rehearing En banc). In that case the appellant Watson was indicted in two counts for violations of the federal narcotic laws arising from the possession of 13 capsules of heroin. In one count he was charged with a violation of 26 U.S.C. 4704(a) and in the other count with a violation of 21 U.S.C. 174. Before the trial the appellant was committed to St. Elizabeth's Hospital upon his own motion for a mental examination. The hospital reported after examination that the appellant was competent to stand trial and that he was without mental disease or defect at the time of the alleged offense. At the trial the Government called two witnesses. The first was a police officer who testified that he obtained a search warrant for the appellant's apartment and that upon executing it he

found the appellant in bed. When asked by the officer whether he had any narcotics on the premises, the appellant directed the officer to look in his trousers. A search of that part of the trousers where the appellant said he had narcotics revealed an envelope containing 13 capsules of heroin. The envelope, of course, bore no tax stamp. The second government witness was a chemist, who testified that upon analysis the capsules revealed the presence of heroin.

The appellant's defense at the trial was that of insanity. He did not testify. In support of his defense he called a psychiatrist from St. Elizabeth's Hospital who had examined him during his commitment and a clinical psychologist from the hospital who had also examined him during this period and who had administered to him a number of psychological tests. The psychiatrist testified that he diagnosed the appellant currently as having a "schizoid personality" and as of the time of the offense. Additionally (and relevant in regards to the instant case) the psychiatrist characterized the appellant as being a narcotic addict. This characterization was based upon what he had been told, but which he had not verified, as to the appellant's narcotics history. The psychologist did not in his testimony add to the appellant's narcotics use or history. Another psychiatrist from St. Elizabeth's, called by the Government as a rebuttal witness, "professed himself to be satisfied that appellant was a narcotics addict . . . ."

After the conclusion of the evidence, the Court instructed the jury. The jury brought in a verdict of guilty on both counts. Later the Government filed an information with the Court informing it that the appellant had two prior convictions, one in 1954 for four counts in an indictment charging violations of the Harrison Narcotic Act for which he received a sentence of from 20 months to five years; and another conviction in 1954 by plea to three counts of an indictment charging violations of the Harrison Narcotic Act and the Jones-Miller Act upon which he was sentenced to five years imprisonment.

At the time of sentencing in the subject case, the Court, as it was compelled to do by statute as a result of the previous convictions (21 U.S.C. 174; 26 U.S.C. 4704(a), 7237(a) & (d), sentenced the appellant to 10 years imprisonment on each count, with neither suspension, probation, nor parole available to him. The sentences were made to run concurrently with each other. After the appellant said that he was an addict, the Court on its own recommended that the sentence be served at the hospital at Lexington. This recommendation could not be followed and the appellant was serving his sentence in a prison facility.

In the subject opinion the full Court affirmed the appellant's conviction, but vacated the sentence with directions that he be regarded on resentencing as eligible for non-criminal disposition under Title II of the Narcotic Addict Rehabilitation Act of 1966. This result was in response to the claim made on behalf of the appellant on appeal that the statutory classification of ineligibility founded upon two prior felony convictions was, as applied to the appellant, so wanting in rationality as to constitute a denial of equal protection. In the part of the opinion (IV) dealing with this contention this Court noted first that it was obvious from the sentencing proceedings that the trial Court did not regard appellant as eligible to be considered for disposition under the provisions of Title II of the Narcotic Addict Rehabilitation Act of 1966 on account of his two prior narcotic convictions. This Court next went on to examine the policy declared by Congress in the Act and the implementation of the policy as set forth in the provisions of the Act. Notably, the Court concluded:

> "An addict who, at the time the 1966 Act became law, did not have two prior convictions is not disqualified from disposition under the new and enlightened provisions of the Narcotic Addict Rehabilitation Act.

Contrarily, one who, like appellant, suffered criminal narcotics convictions on two occasions before 1966, is denied the rehabilitative possibilities of the new approach. Certainly when those two prior convictions are possible upon a mere showing by the government of an addict in possession, we think the discrimination between the two classes of addicts is constitutionally unacceptable. As the Supreme Court has said in another, but not entirely irrelevant, context:

> 'Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made.'

"Even if appellant's two prior narcotics convictions may be found to have involved actual proof of selling, and even if it be assumed that he was engaged in selling to support his habit contemporaneously with his present offense, the result we reach on this score is the same, involving, as it does, not the issue of his amenability to criminal prosecution but only his eligibility, after such prosecution and conviction, to be considered by the sentencing judge for possible disposition under Title II. And, although it is true that no explicit challenge was made in the District Court to the assumption that appellant was ineligible for such consideration, we think it appropriate to deal with the issue as raised in this court. Our holding in this regard does not turn on any disputed or obscured matters of fact requiring resolution or inquiry in the first instance by the trial court. Appellant was conceded to be a narcotics addict of long standing; and this is the only fact crucial to our holding. His eligibility would have been patent but for the two prior convictions—and those were convictions for federal narcotics offenses under the same statutes involved in this appeal. We hold only that the two-prior-felony

> disqualifying exclusion of Title II, as applied to appellant on these facts, is unconstitutional under the concept of equal protection embodied in the Due Process Clause of the Fifth Amendment." (Slip opinion pp. 28-29. Footnotes Omitted)

In two cases decided by this Court after the above noted en banc ruling in the *Watson* Case, the sentences were vacated and the case similarly remanded to the District Court, for consideration whether the respective appellants were eligible for rehabilitative disposition under the Narcotic Addict Rehabilitation Act. (*Kleinbart v. United States,* ___U.S. App. D.C. ___, ___F.2d ___(Slip opinion 21,408 October 9, 1970 and *United States v. Williams,*___U.S. App. D.C.___, ___F.2d ___(Slip opinion 23,597 December 10, 1970)). The actions that were taken in these two cases were in light of the en banc decision in *Watson.*

This case in its material respects, is identical to all the above noted cases and should be treated the same way.

Following his arrest in this case, the defendant was interviewed on June 3, 1970 by a representative of the District of Columbia Bail Agency. The defendant told the representative, according to a report that was filed, that he "last used heroin yesterday and uses all he can get." In a petition to have the Court adjudge the defendant a drug addict filed by his attorney in the Court below, it was averred therein that the defendant "is and has been for many years a drug addict, requiring him to use approximately seventy caps or five bags of heroin per day." It was further alleged that the heroin seized in his apartment on June 2, 1970, which was the basis for the charges brought against him in this case, "was for his personal use and not for the sale to other drug addicts." The defendant pleaded guilty in the count below to the lesser (in terms of penalty) of the two charges against him. The plea of guilty, of course, was in reference to an offense that arose from his possession of the very drugs that were said in the petition to be for his personal use.

After the defendant entered his guilty plea, the Court told his attorney to "take him to the probation office and tell them we are considering commitment under Title II, but we want a pre-sentence investigation and report anyway." However, later in adjudging sentence the Judge did not consider the defendant eligible for treatment under Title II of the Narcotic Rehabilitation Act "because of his prior record, and the crimes involved."[3] Taking this view of the matter, the Judge therefore imposed a mandatory sentence of seven years under the narcotic statutes,[4] which, as in *Watson*, there is "neither suspension, probation, nor parole available to him." However, the Judge did "recommend medical treatment if possible" for the defendant. The defendant is presently serving the seven year sentence at a penal institution, Lorton Reformatory. This predicament offends the congressional purpose and policy implicit in the

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[3]According to the Bail Agency report of June 3, 1970, the MPD files (Metropolitan Police Department) showed a 1947 conviction for "U.U.V.", which is a common abbreviation for unauthorized use of an auto, a felony under 22 D.C. Code sec. 2204; a 1948 conviction for "GL," an abbreviation for Grand Larceny, a felony under 22 D.C. Code sec. 2201; a 1962 conviction for "HNA," the Harrison Narcotic Act, likewise a felony. This last conviction is the one about which the Government filed the information of previous conviction on January 7, 1971 in this case. Under Title II of the Narcotic Rehabilitation Act, an offender "who has been convicted of a felony on two or more prior occasions," is excluded. (18 U.S.C. sec. 4251) The logic of the Court's opinion in the Watson case, supra, was said by Wright, Circuit Judge, concerning "leads clearly to the conclusion that the federal narcotic laws involved in this case do not apply to nontrafficking narcotics addicts in possession only of narcotics for their own use." (Slip opinion p. 30) Footnote 15 of the Court's opinion in Kleinbart, supra, states in part: "*Watson* held that it would offend the concept of equal protection subsumed within the due process clause of the Fifth Amendment to bar persons with prior felony convictions from consideration for treatment under the Narcotics Rehabilitation Act . . ." (Slip opinion at 7)

[4]26 U.S.C. 4704(a); 26 U.S.C. 7237(a) & (d).

legislative scheme of the Narcotics Rehabilitation Act of 1966 (18 U.S.C. Sec. 4251 et seq.); it offends the interest of justice and the concept of equal protection embraced within the due process clause of the Fifth Amendment.

CONCLUSION

In accordance with the decision in *Watson, supra,* followed in *Kleinbart, supra* and *Williams, supra,* the defendant, notwithstanding his felony convictions has a right to be considered for treatment under the Narcotic Addict Rehabilitation Act of 1966. In the interest of justice, his sentence should be vacated and this case remanded to the District Court for resentencing.

Respectfully submitted,

JOHN A. SHORTER, JR.
Counsel for Appellant
508 Fifth Street, N.W.
Washington, D.C. 20001
638-4040

APPENDIX

THE UNITED STATES OF AMERICA	:	Criminal No. 1931-70
	:	Grand Jury No. 1659-70
v.	:	Violation: 26 U.S.C. 4704(a), 21 U.S.C. 174
AZRA HAMILTON, JR.	:	(Possession of Narcotic Drugs Not in Original Stamped Package; Receipt and Concealment of Narcotic Drugs, Knowing Same to Have Been Imported Contrary to Law)

The Grand Jury charges:

FIRST COUNT:

On or about June 2, 1970, within the District of Columbia, Azra Hamilton, Jr. purchased, dispensed and distributed not in the original stamped package and not from the original stamped package, a narcotic drug, that is, six packets containing a mixture totaling about 5,179 milligrams of heroin, and other substances.

SECOND COUNT:

On or about June 2, 1970, within the District of Columbia, Azra Hamilton, Jr. received, concealed and facilitated the concealment of a narcotic drug, that is, six packets containing a mixture totaling about 5,179 milligrams of heroin, and other substances, after said heroin had been imported into the United States contrary to law, with the knowledge of Azra Hamilton, Jr. This is the same heroin which is mentioned in the first count of this indictment.

/s/ Thomas A. Flannery
Attorney of the United States in
and for the District of Columbia

Judge Smith

A True Bill:
/s/ Ophelia B. Myers
Deputy Foreman

JA 2

[redacted] FOR THE

DISTRICT OF COLUMBIA

United States of America

v.

AZRA HAMILTON, JR.

No. 1931-70

FILED

JAN - 8 1971

JAMES F. DAVEY, Clerk

On this 8th day of January, 1971 came the attorney for the government and the defendant appeared in person and[1] by his counsel, Donald Daneman, Esquire.

IT IS ADJUDGED that the defendant upon his plea of[2] guilty and the Court being satisfied there is a factual basis for the plea,

has been convicted of the offense of

Possession of Narcotic Drugs not in Original Stamped Package, in violation of 26 U.S. Code, Section 4704(a)

as charged[3] in Count 1,

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4]

SEVEN (7) YEARS.

[redacted]

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

United States District Judge.

Clerk.

The Court recommends defendant receive medical treatment.

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required. [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

FPI 81—10-20-69 500 4127

PETITION TO ADJUDICATE THE DEFENDANT A DRUG ADDICT

Your Petitioner, AZRA HAMILTON, JR., by Donald Daneman, his attorney, respectfully represents unto your Honor.

1. That your Petitioner is charged in Criminal No. 1931-70 with purchasing, dispensing and distributing six packets of heroin on June 2, 1970, said heroin not being in the original stamped package and not from the original stamped package.

2. That your Petitioner avers that he is and has been for many years a drug addict, requiring him to use approximately seventy caps or five bags of heroin per day.

3. That your Petitioner did develop severe abscesses on his body, requiring him to obtain skin grafts on his arm at the D.C. General Hospital in August of 1970.

4. That the heroin seized in your Petitioner's apartment on June 2, 1970, was for his personal use and not for the sale to other drug addicts.

5. That only a physical examination of your Petitioner's body can reveal the extent of your Petitioners' drug addition and the physical damage sustained by his body.

WHEREFORE, your Petitioner prays that an Order be passed adjudicating the Defendant, AZRA HAMILTON, JR. to be a drug addict and committed to the proper institution for care and treatment.

/s/ Donald Daneman
Donald Daneman, Esquire
735 Equitable Building
Baltimore, Maryland 21202
727-3033

INFORMATION AS TO PREVIOUS CONVICTION

The United States Attorney, pursuant to Section 4704(a) of Title 26, District of Columbia Code, informs the Court that the above-named defendant in this case pleaded guilty to possession of narcotic drugs not in original stamped package on December 4, 1970, which is not a first offense, but a subsequent offense, the defendant having pleaded to following offense:

On December 5, 1963, the defendant pleaded guilty to possession of narcotic drugs in this Court in Criminal No. 1056-62. On February 28, 1964, the defendant was sentenced to 8 to 24 months imprisonment.

The said defendant so identified in Criminal No. 1056-62 is the same Azra Hamilton, Jr., who is charged in Criminal No. 1931-70 now pending before this Court for sentencing.

/s/ Thomas A. Flannery
THOMAS A. FLANNERY
United States Attorney

/s/ Philip L. Cohan
PHILIP L. COHAN
Assistant United States Attorney

d.o.b.

The following information is submitted pursuant to PL 89-519 for use in determining conditions of release under the Bail Reform Act of 1966. VERIFIED

RESIDENCE-FAMILY ☐ Yes ☐ No
Present Address [illegible]

Length of residence [illegible] Living with [illegible], sister

Former address [illegible] ☐ Yes ☐ No

Length of residence ** Lived with **

Marital Status single D.C. Area resident for 27 yrs. ☐ Yes ☐ No

Family ties in D. C. Area sister ☐ Yes ☐ No

EMPLOYMENT-SUPPORT ☐ Yes ☐ No
~~Present~~ Employment unemployed for 2½ yrs.

How long ** Type of work **

Prior employment Randle Printing Co. in Chillum Md. ☐ Yes ☒ No

How long 1 yr 2 m Type of work oper. Reason for leaving fired

If unemployed, how supported "hustling" Education 7th grade

OTHER PENDING CHARGES def states none

OUTSTANDING WARRANTS OR DETAINERS None known

PRIOR CONVICTIONS MPD files: 17/UUV/1-3 yrs prob. 48/[illegible]/[illegible] [illegible]/[illegible] [illegible]
61/good time release revked; 62/UNA/parole revoked 2 yrs.

REMARKS Def states he last used heroin yesterday and uses all he can get.

RECOMMENDATION

☐ **PERSONAL RECOGNIZANCE**—Indicated by the defendant's strong ties to the community.

☐ **CONDITIONAL RELEASE**—Indicated by the relatively weak community ties of the defendant. The specific indicator for each of the conditions is shown parenthetically below:

- ☐ Condition I (weak family ties): Custody release to ______.
- ☐ Condition II (weak residence ties):
  (a). That the defendant must reside at ______, which is an area address reachable by telephone: (b). Live with ______, (who has agreed) (if he will agree) to report any violation of this condition; and (c). Report to the Bail Agency weekly by telephone.
- ☐ Condition III (weak employment ties):
  (a). That the defendant must find employment within five (5) days; (b). Report this employment to the Bail Agency immediately; and (c). Understand that a failure to comply may result in revocation of bond.
- ☐ Condition V (short duration in the community): That the defendant may not leave the jurisdiction during the pendency of this matter.
- ☐ Work Release (prior criminal record):
- ☐ Youth Condition (growing out of the special problems posed by the age of the defendant): That the defendant understand that a subsequent arrest while on bond will be grounds, at the discretion of the committing magistrate, for revocation of the present release order.
- ☒ Other: [illegible]

☐ **OTHER CONDITIONS** as determined by the Court. The Bail Agency is unable to recommend personal recognizance or a conditional release because ______

[illegible signature]
Signature of Bail Agency Representative

Date [illegible]

LC-1

Release Conditions Set By Comm. Mag. ______

NOTICE OF APPEAL

Name and address of appellant *Azra Hamilton, 3149 Mt. Pleasant Street, N.W., Washington, D.C.*

Name and address of appellant's attorney *John A. Shorter, Jr., 508 Fifth Street, N.W., Washington, D.C.*

Offense *26 U.S.C. 4704(a), 21 U.S.C. 174 violating U.S. Narc. Laws.*

Concise statement of jdugment or order, giving date, and any sentence. *Plea of guilty to violating U.S.C. 4704(a) and seventeen by the Court on January 8, 1971, to a term of seven (7) years imprisonment.*

Name of institution where now confined, if not on bail

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

January 18, 1971
Date

/s/ Azra Hamilton, by John Shorter, Jr.
Appellant Attorney

/s/ John A. Shorter, Jr.
Attorney for Appellant.

[2] PROCEEDINGS

THE COURT: All right.

MR. DANEMAN: I think we have reached an agreement. I think the government will go along with what we mentioned.

THE COURT: Is that correct?

MR. COHAN: Yes, Your Honor. The government is willing to accept a plea to count one. We will dismiss the remaining counts in the indictment.

THE COURT: That is count No. 1?

MR. COHAN: Yes.

MR. DANEMAN: Will Your Honor ask my client a few questions about his plea?

THE COURT: Yes.

THE COURT: Mr. Hamilton, do you want to plead guilty to the charge of possession of narcotic drugs not in the original stamped package?

THE DEFENDANT: Yes, sir.

THE COURT: Do you admit on or about June 2, 1970 within the District of Columbia, that you purchased, dispensed and distributed not in the original stamped package and not from the original stamped package a narcotic drug, that is six packets containing a total mixture of 5,179 milligrams of heroin [3] and other substances?

THE DEFENDANT: Yes, sir.

THE COURT: Have you been advised and do you understand that you have a right to a speedy trial by jury with the aid of counsel?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that you will have no such right if your plea of guilty is accepted?

THE DEFENDANT: Yes, Your Honor, I understand that.

THE COURT: Do you understand that you will have the assistance of counsel at the time of sentencing if your plea is accepted?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that you are pleading guilty to count one charging you with possession of narcotic drugs?

THE DEFENDANT: Yes, sir.

THE COURT: Do you admit committing that offense?

THE DEFENDANT: Yes, sir.

THE COURT: Has your plea of guilty been induced by any promise as to what sentence will be imposed by the Court?

THE DEFENDANT: No, sir.

MR. DANEMAN: Has anyone promised you what the sentence will be?

[4] THE DEFENDANT: No sir.

THE COURT: Have you been threatened by anybody to enter a plea of guilty?

THE DEFENDANT: No, sir.

THE COURT: Have any promises of any kind been made to you to induce you to plead guilty other than the remaining count of the indictment will be dismissed at the time of sentencing?

THE DEFENDANT: No, sir.

THE COURT: Have you been advised as to the maximum sentence that may be imposed by the Court?

THE DEFENDANT: Yes, sir.

THE COURT: That is a maximum of ten years and a fine?

THE DEFENDANT: Yes, sir.

THE COURT: That is a maximum of ten years plus a fine?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand the consequences of entering a plea of guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Are you entering the plea of guilty voluntarily and of your own free will because you are guilty and for no other reason?

[5] THE DEFENDANT: Yes.

THE COURT: Have you discussed your plea fully with your counsel?

THE DEFENDANT: Yes.

THE COURT: Are you completely satisfied with the services of your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Very well. The plea will be accepted.

Take him to the probation office and tell them we are considering commitment under Title two, but we want a presentence investigation and report anyway.

You are to come back voluntarily on January 4.

MR. DANEMAN: That may present a problem. I won't be back from my vacation on that date.

THE DEFENDANT: Would it be advisable for me to tell them when I talk to the probation office that I am under the program at—

THE COURT: You tell them the whole story.

What is the first date you can make it?

MR. DANEMAN: On Friday, the 8th.

THE COURT: We will continue it until then.

You explain it all to the probation officer.

You may remain on bond, but you are to comply with all the conditions of your bond.

[6] If you fail to appear, you will be subjected to additional penalties.

THE DEFENDANT: I would be bail jumping.

THE COURT: Yes.

THE DEFENDANT: I will be here.

— — —

[8] PROCEEDINGS

THE COURT: All right.

MR. DANEMAN: Mr. Hamilton failed to appear. He failed to keep an appointment in my law office at 11:30.

THE COURT: A bench warrant will be issued.

You might stand by until ten o'clock and perhaps he will appear.

MR. DANEMAN: Yes, Your Honor.

(Defendant now in Court)

THE COURT: All right. Mr. Hamilton, you had an appointment yesterday that you did not keep. Where were you?

THE DEFENDANT: I thought it was the 8th.

THE COURT: You were supposed to see your attorney yesterday, weren't you?

THE DEFENDANT: I was at the hospital. I didn't get out in time. I went over for treatment for my arm.

THE COURT: Is there anything further you want to say at this time?

THE DEFENDANT: Well, I have been under the program and I have been behaving myself.

THE COURT: Are you the same Azra Hamilton that was convicted of possession of narcotics before Judge Walsh?

THE DEFENDANT: Yes, sir.

THE COURT: You were sentenced before him?

[9] THE DEFENDANT: Yes, sir.

THE COURT: Is there anything you want to say?

MR. DANEMAN: Your Honor, the last time we were before Your Honor, you had occasion to look at my client's arm.

THE COURT: Yes, he appears to be in much better shape today.

MR. DANEMAN: "Yes. He is still receiving treatment at the hospital for his arm.

"I would ask Your Honor to place this man in some federal hospital where they could keep an eye on the skin grafts and where he could receive some type of group therapy to help straighten out his thinking in regard to his use of narcotics because it is killing him and just to put a man in a cell and say to him serve your time is not enough.

"There are some people that are weaker than others and we ought to try and guide them in life and help show them the way.

"I think this is a prime example of a man that for more than 20 years has been addicted to narcotics, all types of drugs, and you can see what he has done to his body physically and we should try and help him.

"I respectfully ask that he be sent to some institution where he can get the proper medical and psychological treatment [10] that he needs."

"THE COURT: Unfortunately, as you know, because of his prior record, and the crimes involved, he is not eligible for treatment under the Narcotics Addict Rehabilitation Act and there is a mandatory sentence here.

"In Criminal Case No. 1931-70, the Court sentences the Defendant, Azra Hamilton, Jr., to be incarcerated for a period of seven years in a penal institution to be designated by the Attorney General or his authorized representative.

"I will recommend medical treatment if possible, but I don't know what is available under the circumstances."

— — —

This record is certified by the undersigned to be the official transcript of the above-entitled proceedings.

/s/ Dawn T. Copeland
Dawn T. Copeland, Official Court Reporter

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1148

UNITED STATES OF AMERICA, APPELLEE

v.

AZRA HAMILTON, JR., APPELLANT

Appeal from the United States District Court for the District of Columbia

THOMAS A. FLANNERY,
United States Attorney.

JOHN A. TERRY,
PHILIP L. COHAN,
DANIEL J. BERNSTEIN,
Assistant United States Attorneys.

Cr. No. 1931-70

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TABLE OF CASES

OTHER REFERENCES

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* Cases chiefly relied upon are marked by asterisks.

ISSUE PRESENTED *

In the opinion of appellee, the following issue is presented:

Whether the sentencing judge erred in denying appellant consideration for sentencing under Title II of the Narcotic Rehabilitation Act, having found that because of appellant's five previous felony convictions he was not an "eligible offender" under the Act?

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* This case has not previously been before this Court.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1148

UNITED STATES OF AMERICA, APPELLEE

v.

AZRA HAMILTON, JR., APPELLANT

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By a two-count indictment filed October 30, 1970, appellant was charged with violations of 26 U.S.C. § 4704 (a) and 21 U.S.C. § 174. On December 4, 1970, appellant pleaded guilty before the Honorable John Lewis Smith, Jr., to the § 4704 (a) count, the remaining count being dismissed by the government. On January 8, 1970, Judge Smith having first found that appellant's criminal record made him ineligible for consideration for sentencing under Title II of the Narcotic Addict Re-

habilitation Act (NARA),[1] sentenced appellant to a term of seven years' imprisonment. This appeal followed.

ARGUMENT

The sentencing judge did not err in denying appellant consideration for sentencing under Tile II of NARA, since appellant's five previous felony convictions made him ineligible for a NARA sentence.

Relying on this Court's *en banc* decision in *Watson* v. *United States*,[2] appellant contends that the sentencing judge erred in finding him ineligible for consideration for treatment under Title II of the Narcotic Addict Rehabilitation Act because of his previous record of felony convictions, which were as follows:

1947—Unauthorized use of a vehicle (Cr. No. 923-47);
1948—Unauthorized use of a vehicle (Cr. No. 880-48);
1952—Housebreaking (Cr. No. 1095-52);
1952—Housebreaking (Cr. No. 1109-52);[3]
1962—Harrison Narcotics Act (Cr. No. 1056-62).

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[1] 18 U.S.C. §§ 4251-4255.

[2] ___ U.S. App. D.C. ___, 439 F.2d 432 (1970) (*en banc*).

[3] The record contains only a certified copy of appellant's 1962 narcotic conviction. This Court, however, may take judicial notice of the records of the District Court, and thus it may consider appellant's entire felony criminal record in this jurisdiction. *See Fletcher* v. *Evening Star Newspaper Co.*, 77 U.S. App. D.C. 99, 133 F.2d 395 (1942), *cert. denied*, 319 U.S. 755 (1943).

The two housebreaking convictions resulted from appellant's pleas of guilty to two separate indictments, both charging housebreaking in violation of 22 D.C. Code § 1801 (1967). Although the indictment in Cr. No. 1109-52 is silent, the criminal complaint lodged in the District Court criminal jacket recites that the housebreaking was committed at "night." In Cr. No. 1095-52 the indictment is silent, and the criminal complaint does not appear in the District Court criminal jacket. However, appellee would be prepared to show, if called upon to do so, that the housebreaking was committed at approximately 3:30 a.m. *Cf. United States* v. *Kearney*, 136 U.S. App. D.C. 328, 331 n.4, 420 F.2d 170, 173 n.4 (1969).

Notwithstanding the holding in *Watson*, we submit that appellant was not an "eligible offender" under Title II of NARA and consequently was not entitled even to preliminary consideration under the act at time of sentencing.

The actual holding in *Watson* was very narrow. This Court held that a non-trafficking narcotic addict with two previous felony convictions is still eligible for sentencing under Title II of NARA despite the exclusion in 18 U.S.C. § 4251 (f) (4), *if* the two previous convictions were, in effect, for the mere possession of heroin and were both incurred before the effective date of the Act (Novmber 8, 1966). The opinion concluded that "the two-prior-felony disqualifying exclusion of Title II,[4] as applied to appellant [Watson] on these facts, is unconstitutional under the concept of equal protection embodied in the Due Process Clause of the Fifth Amendment."

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[4] 18 U.S.C. § 4251 provides in pertinent part:

> (f) "Eligible offender" means any individual who is convicted of an offense against the United States, but does not include
>
> (1) an offender who is convicted of a crime of violence.
>
> (2) an offender who is convicted of unlawfully importing or selling or conspiring to import or sell a narcotic drug, unless the court determines that such sale was for the primary purpose of enabling the offender to obtain a narcotic drug which he requires for his personal use because of his addiction to such drug.
>
> (3) an offender against whom there is pending a prior charge of a felony which has not been finally determined or who is on probation or whose sentence following conviction on such a charge, including any time on parole or mandatory release, has not been fully served: Provided, That an offender on probation, parole, or mandatory release shall be included if the authority authorized to require his return to custody consents to his commitment.
>
> (4) an offender who has been convicted of a felony on two or more prior occasions.
>
> (5) an offender who has been committed under title I of the Narcotic Addict Rehabilitation Act of 1966, under this chapter, under the District of Columbia Code, or under any State proceeding because of narcotic addiction on three or more occasions.

—— U.S. App. D.C. at ——, 439 F.2d at 457.[5] The Court held that addicts who had two pre-1966 narcotic felony convictions were being denied equal protection and the benefits of Title II when their class was compared with a class of addicts who did not have two narcotic felony convictions as of 1966 and whose "chances of never having that second conviction "[which would render them ineligible for Title II benefits] was "markedly enhanced by [their] eligibility, prior to prosecution, for rehabilitative commitment under Title I of the Act.[6] —— U.S. App. D.C. at —— n.13, 439 F.2d at 457 n.13.

When appellant's status is compared with that hypothetical class of addicts defined in *Watson*, it is evident that appellant is not being denied equal protection of the law. Although with the benefits of Title I available appellant might never have received a second narcotic conviction after 1966, this factor is immaterial since his disqualification rests independently on four other *non-narcotic* felony convictions. Moreover, at least one and probably both of appellant's prior housebreakings were committed at night.[7] Consequently, appellant would be ineligible for Title II under a separate exclusionary provision[8] for having been convicted of a crime of violence.[9]

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[5] *See Baxstrom* v. *Herold*, 383 U.S. 107 (1966).

[6] Title I of NARA, 28 U.S.C. §§ 2901-2906, authorizes civil commitment in lieu of prosecution of narcotic addicts charged with offenses against the United States.

[7] At the time this brief was filed, the sentencing judge had under consideration a motion by appellant to make appellant's presentence report part of the record on appeal. This would in all likelihood confirm appellee's representations concerning the nighttime housebreakings.

[8] 18 U.S.C. § 4251 (f) (1).

[9] A crime of violence is defined as including "voluntary manslaughter, murder, rape, mayhem, kidnapping, robbery, *burglary or housebreaking in the nighttime*, extortion accompanied by threats of violence, assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable as a felony, or an attempt or conspiracy to commit any of the foregoing offenses." 18 U.S.C. § 4251 (b).

CONCLUSION

WHEREFORE, appellee respectfully submits that the judgment of the District Court should be affirmed.

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